

R. Scott Jerger

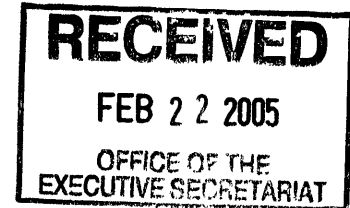
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February 14, 2005

VIA CERTIFIED MAIL

Mr. Ray Vaz, Jr.
Mr. Ray Vaz, Sr. (Owner)
Rio Vista Dairy
3909 Woodbine Way
Roswell, New Mexico 88203



Re: Supplemental Sixty-day Notice of Violations of the Clean Water Act

Dear Messrs. Vaz,

This letter provides you with a supplemental notice of intent of Concerned Citizens for Clean Water, Inc., a New Mexico not-for-profit corporation, and the Sierra Club (collectively "Concerned Citizens") to file a citizen suit against Rio Vista Dairy, located at 3909 Woodbine Way, Roswell, New Mexico 88203, pursuant to section 505(a)(1)(A) of the Federal Water Pollution Control Act, commonly known as the Clean Water Act ("CWA"), 33 U.S.C. § 1365(a)(1)(A). This notice supplements, and does not supercede, Concerned Citizens' notice letter dated December 16, 2004. We plan on filing suit very soon, and do not intend to wait another 60 days.

This lawsuit will allege that Ray Vaz Sr., Ray Vaz Jr. and Rio Vista Dairy (collectively referred to as "Rio Vista Dairy"), have violated and continue to violate the CWA, EPA's CWA implementing regulations, and applicable state water pollution control laws, including but not limited to state water quality standards. The Rio Vista Dairy is a large Concentrated Animal Feeding Operation ("CAFO") as defined by 40 C.F.R. 122.23. CAFOs are considered point sources under the CWA. 33 U.S.C. 1362 (14).

Section 301 of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant from a point source into waters of the United States unless such discharge is permitted in a National Pollutant Discharge Elimination System ("NPDES") permit. CAFO NPDES permits contain effluent limitations pursuant

to Section 304 of the CWA, 33 U.S.C. § 1314 that establish limitations on the discharge of pollutants from CAFOs on a national basis.

All dairy CAFOs in operation prior to April 14, 2003 that contain over 700 mature dairy cows must have an NPDES permit in order to operate. 40 C.F.R. § 122.23(d), (g). The national effluent limitations for large CAFOs prohibit any discharge from CAFO production areas except precipitation-caused discharges provided that the CAFO operation can prove that the production area is designed and maintained to contain all manure and process wastewater in addition to the runoff from a 25-year, 24-hour rainfall event and that the production area is operated according to specific best management practices and record-keeping requirements. 40 C.F.R. § 412.31(a)(1).

For the land application area, the national effluent limitations for large CAFOs prohibit any discharge from of any manure or process wastewater unless the discharge is the result of precipitation and the CAFO owner can document that all land application of waste conforms to nutrient management practices that ensure the beneficial use of waste through nutrient uptake by fertilized crops at agronomic rates. 40 C.F.R. § 122.23(e).

Additionally, Rio Vista Dairy has violated and continues to violate the CWA, and applicable state water laws, by failing to obtain an individual NPDES storm water permit pursuant to § 402(p) of the Clean Water Act, 33 U.S.C. 1342(p). Rio Vista Dairy is a Concentrated Animal Feeding Operation (CAFO) as defined by 40 C.F.R. 122.23. CAFOs with more than 700 mature dairy cattle are subject to effluent guidelines pursuant to 40 C.F.R. 412, Subpart A. Facilities subject to effluent guidelines or which act as land application sites are considered to be engaging in "industrial activities" and thus subject to storm water permitting requirements in addition to NPDES requirements for operations as CAFOs.

Rio Vista Dairy is not designed, constructed or operated to contain a discharge in the event of a 25-year, 24-hour storm event. Therefore, Concerned Citizens believes that the Rio Vista Dairy has discharged, and continues to discharge, pollutants through a point source or point sources into waters of the United States including springs, wetlands, playa lakes, streams and irrigation and drainage canals, all of which eventually discharge to the Pecos River. Rio Vista Dairy has discharged, and continues to discharge pollutants including, but not limited to, liquid and solid animal wastes. Such wastes contain, among other pollutants, fecal coliform and E. coli bacteria, other pathogenic substances, phosphorus, ammonia, nitrogen, nitrates and suspended solids and alter water quality indicator parameters such as biochemical oxygen demand and pH. Rio

Vista Dairy has never obtained a NPDES permit for such discharges and even if Rio Vista Dairy has obtained a NPDES permit, discharges of the type that have occurred, and are likely to continue to occur, from the facility could not be, and have not been, permitted under federal law.

Illegal discharges and violations of the Clean Water Act include:

- (1) Failure to apply for an NPDES permit from EPA.
- (2) Operating without an NPDES permit in violation of an effluent limitation pursuant to 33 U.S.C. § 1365(f).
- (3) Failure to obtain an NPDES permit for industrial storm water discharges.
- (4) May 15, 2003 discharge from the flood irrigated fields to the storm water retention control structure. The storm water retention control structure is not pumped and serves only as an evaporative system, even though it is not designed as an evaporative system. In addition, the New Mexico Environment Department ("NMED") found that the storm water retention control structure was not designed to contain the 25-year, 24-hour storm event. Therefore, storm water and irrigation effluent has discharged and will continue to discharge from the storm water retention control structure to the Hagerman Canal and eventually to the Pecos River.
- (5) Failure to construct any process wastewater retention control structure for the barn water resulted in a discharge and will continue to result in a discharge of process wastewater from the production area to the Hagerman Canal and eventually to the Pecos River. The NMED stated in the May 15, 2003 inspection of the Rio Vista Dairy that the partially constructed process wastewater lagoon appears to have never been used. There is no indication that the uncompleted process wastewater retention control structures are designed to contain the 25-year, 24-hour storm event.
- (6) Land application of process wastewater to a fallow field has resulted in a discharge and will continue to result in a discharge from the land application area to the Hagerman Canal and eventually to the Pecos River. The NMED found that the Rio Vista Dairy was "severely over-applying nutrients" to this fallow field and that since there is no crop grown on this field this practice "appears to represent disposal, rather than beneficial re-use at agronomic rates of process wastewater." The NMED found that the land application area was not sufficiently bermed to contain the 25-year, 24-hour storm event.

- (7) Each and every discharge from the Rio Vista Dairy must be reported to the United States Environmental Protection Agency and the New Mexico Environment Department. Rio Vista Dairy has failed to comply with these and other similar reporting requirements.
- (8) NMED has specifically found that the Rio Vista Dairy facility is not designed and constructed to contain waste and stormwater in the event of a 25-year, 24-hour storm event.
- (9) Violating effluent limitations and standards without an NPDES permit including, but not limited to, production area management practices and land application management practices pursuant to 33 U.S.C. 1314 and 40 C.F.R. §§ 412.31(a), 122.23(e).
- (10) Failure to maintain any operational and maintenance documentation for the facility (such as freeboard measurements, irrigation records, documentation of application of waste below agronomic rates, soil samples, off-site manure removal logs, nutrient analyses of wastes from the facility, etc.) in violation of federal law.
- (11) Failure to construct a process wastewater retention control structure for the barn water.
- (12) Failure to document that waste is applied at agronomic rates.
- (13) Failure to document "no significant hydrologic connection" between the facility and waters of the United States.
- (14) Failure to develop and implement a comprehensive nutrient management plan ("CNMP") for land applied waste.
- (15) Failure to provide liners and liner certifications for all storm water retention control structures.
- (16) Failure to conduct manure and soil sampling for nitrogen and phosphorus.
- (17) Failure to conduct periodic inspections of land application equipment for leaks.

Concerned Citizens believes and alleges that a history of violations, similar in type and nature to the violations listed above, and if different, all

related to improper construction, operation and maintenance of the Rio Vista Dairy, has continued from at least December 16, 1999 to the present. Such violations are known to Rio Vista Dairy and may be included in future legal actions by Concerned Citizens. Such discharges may only be known to Rio Vista Dairy and eyewitnesses to be determined since such discharges were not reported by Rio Vista Dairy as required by law.

We intend, at the close of the sixty (60) day notice period to file a citizen suit under Section 505 of the CWA against Rio Vista Dairy for the statutory maximum of \$27,500 per day for each violation stated above until March 15, 2004, and \$32,500 thereafter, which occurred since December 16, 1999 in addition to those which have occurred of which you are aware and those occurring subsequent to this letter, plus injunctive and remedial relief, costs, attorney and expert witness fees, and such other relief as may be appropriate.

Persons Giving Notice

The full name, address, and telephone number of the party providing this notice is:

Concerned Citizens for Clean Water, Inc.
P.O. Box 115
Cloudcroft, NM 88317-0115
Telephone Number: (505) 687-3022

Sierra Club, Rio Grande Chapter
1472 S. St. Francis Drive
Santa Fe, NM 87505
Phone: (505) 983-2703

Sierra Club Environmental Law Program
85 Second Street, 2d Floor
San Francisco, CA 94105-3441
Phone: (415) 977-5680

The attorneys representing Concerned Citizens in this notice are:


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Eugene, Oregon 97401
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During the sixty (60) day notice period, Concerned Citizens will be available to discuss effective remedies and actions that might be taken to assure Rio Vista Dairy's compliance in the future with the CWA. If you wish to discuss any aspect of this notice or to discuss settlement of this matter prior to commencement of suit, please contact the undersigned.

Very truly yours,



Scott Jerger
Attorney for Concerned Citizens

COPIES TO:

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Washington, D.C. 20460

Richard Greene, Regional Administrator
Region VI of the United States Environmental Protection Agency
1445 Ross Avenue
Suite 1200
Dallas, Texas 75202

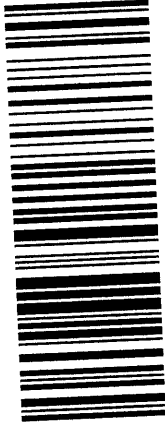
Ron Curry, Secretary
New Mexico Environment Department
P.O. Box 26110

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Bill Richardson, Governor, State of New Mexico
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